

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CONSTANCE LORRAINE,

Plaintiff,

v.

NORMAN L. WALLIN, et. al.

Defendants.

Case No. 3:16-cv-00409-MMD-WGC

ORDER

Plaintiff previously filed in this case a motion to remove a state court action in which she is sued by one of the defendants in this action. (Electronic Case Filing (ECF) No. 32.) At a January 10, 2017 status conference, the court advised Plaintiff that a party seeking to remove a state court case to federal court must file a notice of removal in a *new* action in federal court, and not in a pending federal court case. (*See* Minutes of Jan. 10, 2017 status conference, ECF No. 43 at 2.) As such, the court denied Plaintiff's motion to remove without prejudice, advising her that she could still seek to remove the state court case to federal court but to do so she must submit the notice of removal in a new action. (*Id.*) Defendant Santander Consumer USA Inc. dba Chrysler Capital Santander) had filed a motion to remand (ECF No. 40), presumably in response to Plaintiff's motion for removal, which the court denied as moot in light of the denial of the motion to remove. (*Id.*)

Then, on February 1, 2017, Plaintiff submitted a notice of removal attaching the state court complaint and proposed summons. (ECF No. 44.) Plaintiff did not include the 3:16-cv-00409-MMD-WGC case number on the notice of removal, but it was filed in that case. Because the notice of removal should have been filed as a new action, it was stricken. Santander, who presumably did not see the docket notation striking the document, filed a second motion to remand. (ECF No. 45.)

1 The court hereby directs the Clerk to **FILE** the notice of removal (initially filed as ECF
2 No. 44 in this action, 3:16-cv-00409-MMD-WGC), in a **NEW ACTION**, taking the 3:16-cv-
3 00409-MMD-WGC case number off and inserting the new case number for the filing in the new
4 action.

5 Plaintiff must either pay the filing fee or submit a new completed application to proceed
6 in forma pauperis (IFP) for the new action. Therefore, the Clerk shall **SEND** Plaintiff the IFP
7 instruction packet and form. Plaintiff shall have **TWENTY DAYS** from the date of this Order to
8 pay the filing fee or submit a completed IFP application in the new action.

9 If Plaintiff pays the filing fee, she must serve Santander. If she submits a completed IFP
10 application, and if the court approves the application, the court will direct the Clerk to issue a
11 summons for service by the U.S. Marshal.¹

12 Once service is complete, Santander may re-file its operative motion to remand in the
13 new action. At that time, the court will issue a briefing schedule for the response and reply
14 briefs.

15 **IT IS SO ORDERED.**

16 DATED: March 1, 2017.

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18 WILLIAM G. COBB
19 UNITED STATES MAGISTRATE JUDGE
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Alternatively, Santander may opt to file a notice of acceptance of service in the new action.